BILL SUMMARY

This Board of Equalization (BOE) – sponsored bill would authorize the Members of the BOE, meeting as a public body, to relieve all or a portion of interest imposed by law, not to exceed a specified amount, when the BOE finds that a person’s failure to make a timely payment was due to extraordinary circumstances, as defined, and that it would be inequitable to hold the person liable for the applicable interest, under specified circumstances.

ANALYSIS

CURRENT LAW

Under existing law, persons who are late in payment of their sales and use tax obligations are required to pay a penalty, plus monthly, simple interest on those unpaid taxes from the date the tax is due to the date upon which they are paid. The rate of interest for late payments is currently seven percent annually.

Under existing law, the BOE has authority to relieve a late payment penalty when the BOE finds that the taxpayer’s failure to make a timely payment is due to reasonable cause and circumstances beyond the taxpayer’s control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect. However, interest on a late payment is generally not relievable (except in cases of a disaster or where the failure to pay the tax timely was due to an unreasonable error or delay by a BOE employee). A “disaster” is defined in the BOE’s Regulation 1703 to mean fire, flood, storm, tidal wave, earthquake or similar public calamity, whether or not resulting from natural causes.

Under existing law, Government Code Section 8558 specifies three conditions or degrees of emergency: state of war, state of emergency, and local emergency.

"State of war emergency" means the condition which exists immediately, with or without a proclamation by the Governor, whenever this state or nation is attacked by an enemy of the United States, or upon receipt by the state of a warning from the federal government indicating that such an enemy attack is probable or imminent.

"State of emergency" means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease, the Governor's warning of an earthquake or volcanic prediction, or an earthquake, or other conditions, other than conditions resulting from a labor controversy or conditions causing a "state of war...
emergency," which, by reason of their magnitude, are or are likely to be beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat, or with respect to regulated energy utilities, a sudden and severe energy shortage requires extraordinary measures beyond the authority vested in the California Public Utilities Commission.

"Local emergency" means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a county, city and county, or city, caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease, the Governor's warning of an earthquake or volcanic prediction, or an earthquake, or other conditions, other than conditions resulting from a labor controversy, which are or are likely to be beyond the control of the services, personnel, equipment, and facilities of that political subdivision and require the combined forces of other political subdivisions to combat, or with respect to regulated energy utilities, a sudden and severe energy shortage requires extraordinary measures beyond the authority vested in the California Public Utilities Commission.

**PROPOSED LAW**

This bill would add Revenue and Taxation Code Section 6593.7 to the Sales and Use Tax Law to authorize the Members of the BOE, meeting as a public body, to relieve all or any part of interest imposed, not to exceed $50,000 during a 12-month period, on a late payment if the Members find, in their discretion, that a person's late payment was due to extraordinary circumstances and that it is inequitable to compute interest as the law requires, when all of the following apply:

1) The person was granted relief from all penalties that applied to the late payment.
2) The person has paid the tax on which the interest is imposed, or, in the case of an unpaid tax liability for which a petition for redetermination is pending, the person pays the tax on which the interest is imposed within 30 days from the date the final decision of the BOE on that petition was issued.
3) The person files a request for an oral hearing before the Members of the BOE.
4) The person files a statement with the BOE under penalty of perjury setting forth the facts upon which the claim for relief is based and any other information the BOE may require.

The bill would define “extraordinary circumstances” to mean any of the following:

a) The occurrence of a death or medical incapacity of the person or the person's next of kin that caused the person's failure to make a timely payment.

b) The occurrence of an emergency, as defined in Section 8558 of the Government Code, that caused the person's failure to make a timely remittance.

c) Criminal misconduct by a person, other than the person that failed to make a timely payment, that caused the person's failure to make a timely payment.

The bill would allow the interest liability to be reestablished if the person fails to pay the tax in accordance with the provisions of the bill.

The bill would become effective January 1, 2012.

*This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE’s formal position.*
BACKGROUND

This bill was prompted by a sales and use tax case that was heard by the Members of the BOE at its December 2009 public hearing. In this particular case, the taxpayer's bookkeeper revised the taxpayer's computerized accounting records and embezzled a substantial amount of sales tax reimbursement collected from the taxpayer's customers. Although the bookkeeper was fired and prosecuted and is currently serving a prison sentence, under the law, the taxpayer remains liable for the tax and interest. And, even though the taxpayer had previously an excellent record of payment of sales and use taxes, and acted swiftly and appropriately upon discovery of the embezzlement, the fact that the taxpayer was a victim of such a crime is not a basis for relief. The law does not provide relief from tax or interest based on a loss of the funds after the sale, by embezzlement or otherwise.

Last year’s AB 2375 (Knight) contained similar provisions. That bill was held by the Senate Revenue and Taxation Committee.

COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by the BOE in order to give the Members of the BOE some limited flexibility to provide relief of interest in those unusual cases that come before it, such as that described above.

2. **Issue.** The law recognizes that when there is a *public* disaster, such as an earthquake, flood, or tsunami, that caused a person to make a late payment of sales or use tax to the BOE, the taxpayer should be held harmless with respect to interest charges imposed on that late payment. However, the law should also recognize that on occasion, a late tax payment may be the result of a personal tragedy suffered by a taxpayer. A personal tragedy, such as a family death, medical emergency or criminal misconduct of a trusted employee, can be very crippling to a taxpayer and prevent or greatly inhibit a taxpayer’s ability to make a timely tax payment. This bill recognizes that the Members of the BOE should have authority to grant relief of interest to taxpayers in these tragic situations, whether the cause of the late payment was a public emergency or a personal tragedy as described in the bill.

3. **The relief provisions proposed in the bill related to Government Code-described emergencies may be duplicative of existing law in most situations.** Under current law, a taxpayer’s late tax payment that is caused by the emergencies described in Government Code Section 8558 referenced in the bill may already qualify for relief of interest under Revenue and Taxation Code Section 6593 related to disasters. The bill specifies that in such cases, the $50,000 limit for interest relief authorized in this bill would not apply. Therefore, this bill would have no impact on the BOE’s current authority to relieve interest when the cause of a taxpayer’s late payment was due to a disaster.

4. **The definition of “extraordinary circumstances” would eliminate uncertainties.** The definition of “extraordinary circumstances” removes any subjective standards for relief, and instead, has three specific circumstances that would warrant the granting of interest relief. These specifically-described circumstances would simplify administration of these provisions.

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COST ESTIMATE
The BOE would incur some absorbable costs to administer this bill. These costs would be attributable to preparing cases for hearings, revising the BOE’s regulation, revising publications, and answering inquiries from taxpayers.

REVENUE ESTIMATE
In the embezzlement case that came before the Members of the BOE discussed previously, the accumulated interest amounted to $15,662. However, it is difficult to determine with any degree of certainty to what extent the Members would have provided relief, and to what extent relief of interest taxpayers would seek in general under the provisions of this bill. Therefore, the interest revenue loss related to this bill is indeterminable. However, under the terms of the bill, the loss would not exceed $50,000 during a 12-month period.

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